

**Revision to the Agreement
Between
The State of North Carolina
and
The U.S. Department of Agriculture
Commodity Credit Corporation
Concerning the Implementation of the
North Carolina Conservation Reserve Enhancement
Program**

This Agreement is entered into between the U.S. Department of Agriculture (USDA), Commodity Credit Corporation (CCC), and the State of North Carolina (North Carolina) to modify and expand the Conservation Reserve Enhancement Program (CREP) for the enhancement of water quality by the reduction of sediment and nutrients, and the enhancement of fisheries and wildlife habitats for State and federally listed threatened and endangered species. The CREP is part of the national Conservation Reserve Program (CRP), operated by USDA for CCC. For all new CRP contracts entered into after approval and implementation of this agreement, this agreement supersedes all earlier CREP Agreement provisions between USDA, CCC and North Carolina. For all existing CRP contracts entered into before approval of this agreement, the earlier Agreement provisions shall continue to be adhered to between USDA, CCC and North Carolina.

I. PURPOSE

The purpose of this Agreement is to allow, where deemed desirable by USDA, CCC, and North Carolina, certain acreage in the targeted watersheds to be enrolled under the CREP.

Of the seventeen river basins in North Carolina, CREP will be implemented in the following nine: Neuse, Tar-Pamlico, Chowan, Lumber, White Oak, Yadkin-PeeDee, Cape Fear (including Jordan Lake), Roanoke and Pasquotank, (see CREP project area is Exhibit 1). The estuary and North Carolina Rivers suffer significant water quality challenges. The primary objectives of this Agreement, are to the extent practicable, the following:

1. Provide an opportunity for farmers and ranchers in North Carolina to voluntarily restore riparian and wetland areas through financial and technical assistance.
2. Restore and enhance riparian habitat corridors next to streams, drainage ditches, estuaries, wetlands, and other water courses by enrolling up to

85,000 acres of riparian forested buffers, grass filter strips and other riparian tree planting practices.

3. Restore up to 15,000 acres of non-riparian wetlands either associated with drainage ditches or adjacent to primary fishery nursery areas to address impacts associated with drainage.
4. Provide a mechanism to help farmers comply with the Neuse and Tar-Pamlico Nitrogen Reduction Rules and potential regulations or goals in other watersheds.

This agreement, when approved, will supersede, for new CRP contracts, the Memorandum of Agreement titled: *Agreement Between the United States Department of Agriculture Commodity Credit Corporation and the State of North Carolina concerning the implementation of the North Carolina Conservation Reserve Enhancement Program*, signed on March 1, 1999 and amended on December 23, 2002 and October 1, 2006. CRP contracts approved after the date of signing of this agreement and any amended project implementation will be covered by the terms of this modified project. CRP contracts approved prior to that signing date will be covered by the provisions of the original agreement, as amended prior to this date. In determining whether acreage goals have been met, all enrollments under this Agreement and the one it supersedes shall be taken into account.

This Agreement is not intended to supersede any rules or regulations, which have been, or may be, promulgated by USDA, CCC, North Carolina, or any other Governmental entity participating in this CREP. This Agreement is intended to aid in the administration of the Conservation Reserve Program (CRP).

II. AUTHORITY

The USDA is provided the statutory authority to perform the activities contemplated by this Agreement by the provisions of the Food Security Act of 1985, as amended (1985 Act) (16 U.S.C. 3830 et seq.), and the regulations at 7 CFR part 1410.

Various participating agencies of the State of North Carolina are provided the statutory authority to perform all activity contemplated by this Agreement by the provisions of the North Carolina Agriculture Cost Share Program under N.C.G.S. 143-215.74 et seq.; the North Carolina Ecosystem Enhancement Program N.C.G.S. 143-214.8 et seq.; and the Clean Water Management Trust Fund; N.C.G.S 113, Article 13A, 113-145.1 to 115.8. Other authorities may also apply.

This Agreement is not intended to, and does not, supersede any rules or regulations, which have been or may be promulgated by USDA/CCC, the State of North Carolina, or any other governmental entity participating in the CREP. This Agreement is intended to aid in the administration of the CRP. Other authorities may also apply.

III. PROGRAM ELEMENTS

USDA, CCC, and North Carolina agree that:

- A. The CREP will consist of a continuous sign-up CRP component and a State of North Carolina State Incentive Program. The CREP will seek to enroll up to 100,000 acres in the CRP of environmentally sensitive acreage in areas where water quality may be adversely affected by agriculture. USDA, CCC, and North Carolina agree that in determining CCC's share of the cost of this Agreement's establishment and operation, CCC shall use the appropriate CRP regulations and the FSA CRP National Directives. All CRP contracts executed under this Agreement shall contain conservation plans consistent with applicable CRP statutes, regulations, and specifications, in accordance with USDA policies for similar enrollments and this Agreement.
- B. The CREP will generally target enrollment of 85,000 acres of riparian areas, and 15,000 acres of non-riparian wetlands within the project area Basins.
- C. Land may, on a continuous basis, be enrolled in the program if it meets CCC's CRP cropping and land ownership requirements, land eligibility criteria, conservation practice criteria, and any other CREP or CRP criteria set forth in this Agreement, the CRP Federal Regulations and the FSA CRP National Directives. Enrollments of eligible land are subject to the width and distance limitations of paragraph E. USDA and North Carolina may, if they agree jointly, provide further restrictions on enrollment eligibility in particular cases without amendment of this Agreement, but any expansion of eligibility criteria shall require amendment of this Agreement. Any restrictions on enrollment eligibility must be detailed in and amended to the North Carolina FSA supplement to the Farm Service Agency Handbook 2-CRP and said amendment must be approved by the FSA's CREP Program Manager before those restrictions are implemented.
- D. Conservation plans for the land enrolled in this program shall meet or exceed the minimum criteria of the following CRP practices and shall be in accordance with FSA CRP National Directives and USDA policies for similar enrollments. The eligibility criteria described in FSA CRP National Directives and paragraph E of this section shall be used to determine which lands may be eligible for enrollment in this CREP project. Only the following conservation practices shall be made available under this CREP project:
 - CRP Practice CP3 (Tree Planting)
 - CRP Practice CP3A (Hardwood Tree Planting)
 - CRP Practice CP21 (Filter Strip)
 - CRP Practice CP22 (Riparian Buffer)
 - CRP Practice CP23 (Wetland Restoration)

- CRP Practice CP23A (Wetland Restoration, Non-Floodplain)
- CRP Practice CP31 (Bottomland Timber Establishment on Wetlands)

All practices, including appropriate structural measures, shall be installed in accordance with FSA CRP National Directives and USDA policies for similar enrollments.

E. The following practice and land eligibility criteria, in addition to criteria outlined in FSA CRP National Directives, shall apply:

1. For cropland to be eligible to be enrolled in tree planting practices (**CP3, CP3A, and CP31**), NRCS or Technical Service Providers (TSP's) must first determine that:

- Such cropland exists in a riparian area, and:
- Implementation of the tree planting practice will achieve substantial water quality or wildlife benefits: and
- Such tree planting practices shall not exceed a maximum average width of 300 feet.
- If the CP3 practice is implemented, the trees to be established shall all be suitable short leaf pine seedlings as established by the North Carolina Division of Forest Resources.

(Note: additional North Carolina state special criteria restrictions and requirements are established for these practices, as provided for in paragraph I below.)

2. For cropland to be eligible to be enrolled in grassed filter strips (**CP21**) NRCS or Technical Service Providers (TSP's) must determine that:

- The filter strip is in or near a riparian area, and it meets all other land and practice eligibility criteria as established in FSA CRP National Directives; or,
- Grass filter strips are needed and feasible for cropland for eligible drainage ditches when necessary to improve and increase the effectiveness and environmental benefits of an adjacent new riparian buffer practice CP22; and, when such a ditch, or ditches, bisect or otherwise impede the effectiveness of the riparian buffer.

(i) These eligible drainage ditch filter strip practices shall be limited to only those sites where the riparian buffer does not impede direct delivery of water into a river or stream.

(ii) For purposes of this Agreement, an eligible drainage ditch is defined as a ditch used for draining agricultural land having a minimum bottom width of one-foot minimum depth of 2 feet and minimum side slope of one-half to one foot.

- The filter strips shall not exceed 120 feet in maximum average width.

(Note: additional North Carolina state special criteria restrictions and requirements are established for this practice, as provided for in paragraph I below.)

3. For cropland and marginal pastureland to be eligible to be enrolled under the riparian buffer practice (**CP22**), NRCS or Technical Service Providers (TSP's) must determine that:

- It meets all land and practice eligibility criteria as established in FSA CRP National Directives;
- All enrollments will receive water table management or hydrologic restoration to the greatest extent practical: and
- The riparian buffers shall not exceed a maximum average width of 300 feet.

(Note: also see additional North Carolina state special criteria restrictions and requirements are established for this practice, as provided for in paragraph I below.)

4. For cropland to be eligible to be enrolled as non-riparian wetlands (**CP23 and CP23A**) NRCS or Technical Service Providers (TSP's) must determine that:

- Restoration of the wetlands on the cropland will substantially increase water quality benefits;
- The offered acreage is either (1), entirely hydric soils, or (2), predominantly hydric soils which lie within 750 feet from the top of a stream bank;
- The offered acreage, if enrolled, will receive hydrologic restoration to the greatest extent practicable.

(Note: also see additional North Carolina state special criteria restrictions and requirements are established for these practices, as provided for in paragraph I below.)

- F. In order for any offer to be eligible for enrollment under this Agreement, land must meet all land eligibility criteria established in FSA CRP National Directives and at least fifty one (51) percent of the eligible land must be located within the North Carolina project area (see Appendix 1), as determined by the FSA Deputy Administrator. No CRP contract entered into pursuant to this agreement will be for an enrollment of land comprising less than 0.1 acre.
- G. Notwithstanding any acreage width limitations as provided in paragraph E above, for cropland offers submitted for practices CP3, CP3A, CP21, CP22 and CP31, additional cropland acreage may be offered and enrolled under the infeasible-to-farm provisions as outlined and limited by FSA CRP National directives. Any such infeasible-to-farm cropland acreage enrolled under these practices shall not qualify for additional incentives in annual rental payments rates, as outlined in Section IV C of this agreement.
- H. Water control structures, ditch plugs and other devices or practice components may be included as cost-sharable components under CRP Practice CP22, Riparian Buffer, to improve hydrologic restoration, when feasible, on the enrolled land, as determined by the North Carolina State FSA Committee in consultation with the North Carolina State Technical Committee.
- I. The following special criteria shall apply to the North Carolina State Incentive Program under this CREP Project:
 - 1. Lands enrolled in riparian areas under practices CP3, CP3A, CP21, CP22 and CP31 that contain an average width greater than 100 feet and total 10 acres or more per FSA tract may only be accepted under this CREP if the landowner also enters into an agreement under the State Incentive Program to extend the period of conservation either by an additional fifteen years or permanently. The State may exempt an enrollment from this requirement in the event clear title cannot be verified, pursuant to the NC CREP Title Searching Standards. For exempt enrollments, determine per acre annual rental payments under the CRP contract based on only the provisions IV. C. 1. (a.) plus IV. C. 1. (c.)
 - 2. Enrollments of land using CP23 and CP23A shall only be accepted under this CREP if the landowner also enters into a permanent conservation agreement with the State.
 - 3. For land to be enrolled in a forest cover in an extended conservation agreement with the State, the conservation plan may, as appropriate and as designated in the FSA CRP National Directives for this CREP, provide for some natural regeneration. The conservation plan shall be supplemented with tree planting plan provisions as provided by North

Carolina Division of Forestry Resources or Technical Service Providers (TSP's).

4. In some cases existing forested land may also be enrolled under the State Incentive Program (but not under CRP contract). The ratio of existing forested buffer land enrolled to eligible cropland or pastureland enrolled under the CREP shall not exceed 1:1. Enrollments of existing forested land shall only be accepted under this CREP if both the CRP enrollment and existing forested land are entered into a permanent conservation agreement with the State. State funds obligated toward acreage enrolled as existing forested buffer land will be credited toward the State's 20 percent minimum matching fund requirement, as described in section V.H.
 5. Lands enrolled in a CP3, CP3A, CP22, CP31 practice under the State Incentive provisions of this CREP shall include a Minimal Impact Zone of 50 feet, measured from the top of the stream bank. For purposes of this CREP, a Minimal Impact Zone is a zone measured from the top of the stream bank in which, even after the end of the CRP contract and for the life of the State contract, tree removal is restricted to removal of dead trees and practices necessary to prevent pest or disease infestation or to maintain health of individual trees. It is understood that during the CRP contract itself no commercial use or other use of the property within the Minimal Impact Zone is allowed except as approved by CCC.
 6. Enrollments into the State Incentive Program may be subject to a State minimum enrollment ranking criteria to be established by North Carolina and published in a State FSA supplement to National CRP handbook 2-CRP.
- J. Eligible producers will not be denied the opportunity to offer eligible acreage for enrollment during other CRP enrollment periods.
- K. CRP contracts executed under this Agreement will be administered in accordance with the CRP regulations at 7 CFR part 1410, and the provisions of this Agreement and National CRP Directives. No lands may be enrolled under this program until the FSA's CREP Program Manager approves a detailed North Carolina FSA supplement to the Farm Service Agency Handbook 2-CRP which will provide a thorough description of this program and applicable practices and operating policies and procedures and until completion of the appropriate level of documentation required by the National Environmental Policy Act of 1969, as amended and 7 CFR 799.

IV. FEDERAL COMMITMENTS

USDA and CCC agree to:

- A. Provide cost-share payments to all participants for up to fifty (50) percent of the eligible reimbursable costs incurred for the establishment of approved conservation practices according to FSA CRP National Directives and this Agreement. The total of all cost-sharing payments, from any source, shall not exceed one hundred percent (100%) percent of a participant's out-of-pocket expenses.
- B. Enroll lands that meet the eligibility criteria with the designated practice specifications on a continuous basis in accordance with the general purposes and terms of CRP as defined elsewhere in this agreement.
- C. Maximum annual rental rates shall be determined according to these provisions:
 1. For new land not currently or previously enrolled in CRP, determine per acre annual rental payments under the CRP contract based on:
 - (a.) The posted relevant county CRP soil rental rates according to FSA CRP National Directives; plus,
 - (b.) Special CREP incentive payment percentages in amounts not to exceed the following percentage rates:
 - (A) An additional 70% incentive for cropland to be established to practice CP21 (filter strips); or,
 - (B) An additional 100% incentive for land to be established to any of the following practices:
 - CP3 (Tree Planting - - Short Pines Allowed Only)
 - CP3A (Hardwood Tree Planting)
 - CP22 (Forested Riparian Buffers)
 - CP23 (Wetland Restoration – Floodplains)
 - CP23A (Wetland Restoration – Non floodplains)
 - CP31 (Bottomland Hardwood Tree Planting), plus
 - (c.) A per acre maintenance rate as established according to FSA CRP National Directives.

2. For re-enrolled expiring, or expired, CRP acreage, determine per acre annual rental payments under the CRP contract based on only the provisions in paragraphs IV. C. 1. (a.) and IV. C. 1. (c.)
3. In all cases, the maximum rental rate will be \$150/acre.
- D. Make a one-time incentive payment equal to twenty-five (25) percent of the cost of restoring the hydrology for practices CP23 and CP23A, in accordance with FSA CRP National Directives. The hydrology restoration incentive payment is considered a rental payment for payment limitation purposes.
- E. Administer CRP contracts for land enrolled in the North Carolina CREP in accordance with the provisions of the FSA CRP National Directives.
- F. Develop conservation plans in accordance with FSA CRP National Directives.
- G. Conduct compliance reviews in accordance with FSA CRP National Directives.
- H. Provide information to potential participants concerning the North Carolina CREP, and technical assistance for implementing the CREP program in general in accordance with applicable statutes and laws regulating such actions.
- I. Permit successors-in-interest to existing contracts to participate under the North Carolina CREP in the same manner as allowed for under other CRP contract(s) in accordance with FSA CRP National Directives
- J. Approve CREP offers in accordance with FSA CRP National Directives and this Agreement.

V. STATE COMMITMENTS

North Carolina agrees to:

- A. Seek applicants willing to offer eligible and appropriate land for enrollment in the North Carolina CREP.
- B. Enroll CREP landowners who decide to participate in the State Incentive Program into an additional agreement, as referenced by the FSA CRP National Directives, which will supplement the federal CRP agreement and extend the benefits of CRP enrollments either an additional 15 years (for a total of 30 years) or permanently. The additional agreements shall be with the State of North Carolina or with an appropriate entity designated by the State of North Carolina.
- C. For new land, not currently or previously enrolled in CRP, make payments to landowners participating in the State Incentive Program as follows:

1. Pay landowners who enroll solely in a 10 year CRP contract the following cost share payments: 25 percent of the established costs of approved conservation practices (including site preparation, plantings, restoring hydrology, livestock exclusion and remote watering).
2. Pay landowners who enroll solely in a 14 or 15 year CRP contract the following cost share payments: 30 percent of the established costs of approved conservation practices (including site preparation, plantings, restoring hydrology, livestock exclusion and remote watering).
3. Pay landowners who enroll in an optional State 30- year conservation agreement for a CP3, CP3A, CP21, CP22 or CP31 practice:
 - a. 40 percent of the established costs of approved conservation practices (including site preparation, restoring hydrology, plantings, and the costs of livestock exclusion and remote watering), and
 - b. A one-time incentive payment of \$250 per acre for cropland and marginal pastureland voluntarily enrolled in a 30-year easement under the State Incentive Program, as determined by the State.
4. Pay landowners who enroll in an optional State permanent conservation agreement for a CP3, CP3A, CP22, CP23, CP23A or CP31 practice:
 - a. 50 percent of the established costs of approved conservation practices (including site preparation, restoring hydrology, plantings, and the costs of livestock exclusion and remote watering), and
 - b. A one-time incentive payment of \$1000 per acre for cropland or marginal pastureland, and any additional eligible existing non-CRP forested buffer land voluntarily enrolled in a permanent easement under the State Incentive Program, as determined by the State.
- D. For re-enrolled expiring, or expired, CRP acreage, offer only those payments listed in paragraph C above, which have not already been provided for the reoffered land, under terms and conditions provided by this Agreement or any earlier North Carolina CREP Agreement.
- E. Pay all costs associated with North Carolina's annual environmental monitoring programs as described in its CREP proposal.

- F. Engage in an outreach program at state expense as described in the State's CREP application.
- G. Provide technical assistance through the local Soil and Water Conservation Districts and appropriate field staff from other North Carolina agencies.
- H. Pay a total of 20 percent of the overall costs of implementing this program.
- I. Ensure that the NC CREP is coordinated with other natural resource conservation programs at the State and Federal level.
- J. During the period of a participant's CRP contract, to temporarily release the participant from any easement or other restrictions on crop production if such release is deemed needed by the Secretary of Agriculture in order to address a national emergency.
- K. Within 90 days of the end of each federal fiscal year, provide a report to USDA summarizing the status of enrollments under this Enhancement Program and progress in fulfilling the other commitments of this Enhancement Program. The annual report to USDA will include: level of program participation, the results of any environmental monitoring program, a summary of non-federal CREP program expenditures, and recommendations to improve the program.
- L. Ensure that all terms and conditions of the North Carolina State Incentive Program are implemented and fulfilled as provided in section III.I.

VI. MISCELLANEOUS PROVISIONS

- A. All CRP contracts executed under this Agreement shall be subject to all limitations set forth in the regulations at 7 CFR part 1410 including, but not limited to, such matters as economic use, transferability, violations, and contract modifications. Agreements between participants and the applicable agencies of North Carolina may impose additional conditions not in conflict with those applicable under the regulations at 7 CFR part 1410, but only as approved by USDA.
- B. Neither North Carolina nor USDA shall assign or transfer any rights or obligations under this Agreement without the prior written approval of the other party.
- C. Easements or contracts entered into under the NC CREP may not be assigned or transferred without approval of the landowners.
- D. The Deputy Administrator for Farm Programs, Farm Service Agency or the Deputy Administrator's designee, or their successor, or Successor's designee, is authorized to carry out this Agreement and, with the Governor of North Carolina, or the Governor's designee, or their successor, may further amend this Agreement consistent with the provisions of the 1985 Act, as amended, and the regulations at 7 CFR Part 1410. The

provisions of this Agreement may only be modified by written Agreement between the parties.

- E. North Carolina and the USDA agree that, to the extent possible under applicable law, each party will be solely responsible for its own acts, omissions, and the results thereof, and shall not be responsible for the results thereof caused by the acts or omissions of the other party.
- F. North Carolina and the USDA agree to enter into a data sharing agreement to facilitate the evaluation of North Carolina CREP offers and implementation of signed agreements, and agree to keep the data confidential in a manner that is consistent with State and Federal law, including but not limited to Section 2004 of Public Law 107-171. Data sharing will also be in accordance with procedures, restrictions, and exemptions established under the federal Freedom of Information Act, federal privacy laws and other applicable laws, with the State of North Carolina to facilitate North Carolina's review of offers and monitoring and evaluation efforts.
- G. USDA may enter into CREP CRP contracts with fully eligible persons, for eligible land, provided that the CREP project enrollment limit has not been reached, and that such actions are otherwise authorized by law.
- H. All financial commitments of the USDA/CCC and North Carolina are subject to the availability of funds. In the event either party is subject to a funding limitation or cannot otherwise secure the necessary funding for this Agreement, it will notify the other party within 30 days and any necessary modifications will be made to this Agreement.
- I. This Agreement may be terminated by either party at any time after written notice. Such termination of this Agreement will not alter responsibilities regarding existing contractual obligations established under the North Carolina CREP and the North Carolina State Incentive Program between participants and USDA or CCC, or between participants and North Carolina.
- J. If any clause of this agreement shall be found by a competent court of the federal or state jurisdiction to be void, that clause shall be stricken from the agreement and the rest and remainder of the agreement shall remain in effect or, if both parties shall agree, the entire agreement may be voided, upon mutual consent of the parties.
- K. The U.S. Department of Agriculture prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status. (Not all prohibited bases apply to all programs). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact the USDA, Office of Communications at 202-720-5881 (voice) or 202-720-7808 (TDD.) To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture,

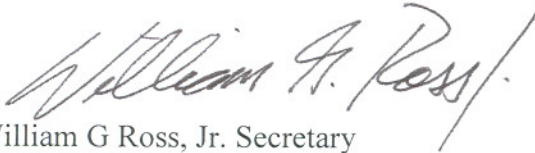
Washington, DC, 20250, or call 202-720-7327 (voice) or 202-720-1127 (TDD).
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John A. Johnson
Deputy Administrator for Farm Programs
Farm Service Agency
United States Department of Agriculture

3-6-08

Date

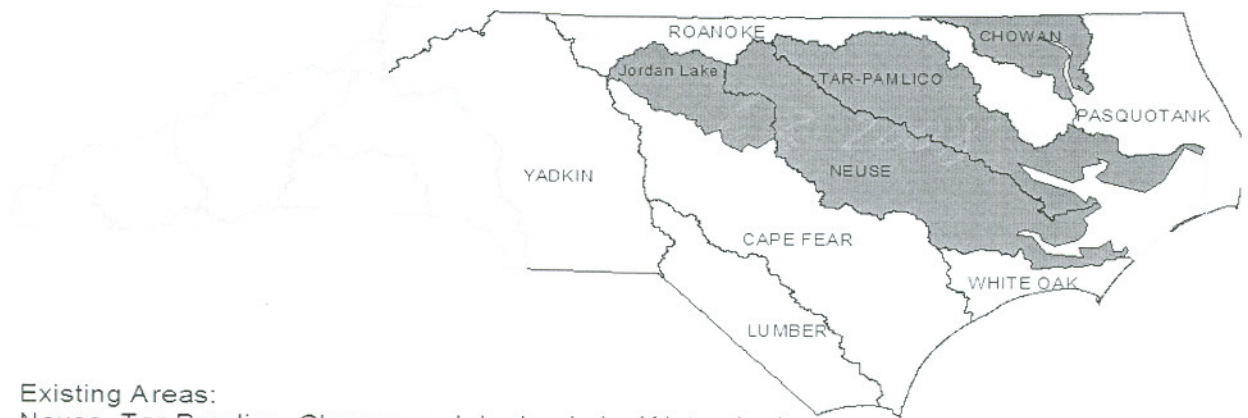


William G Ross, Jr. Secretary
North Carolina
Department of Environment and Natural Resources

March 3, 2008

Date

North Carolina CREP Project Area



Existing Areas:

Neuse, Tar-Pamlico, Chowan and Jordan Lake Watershed

New Areas:

White Oak, Cape Fear, Lumber, Yadkin, Roanoke and Pasquotank